

Plaintiff repeatedly asked defendant to pay him for his last two weeks of work, but defendant refused to pay [*Id.* ¶ 10].

Plaintiff filed this action on February 23, 2024, alleging violation of the Fair Labor Standards Act (“FLSA”) for failure to pay plaintiff a minimum wage of at least \$7.25 an hour for the hours he worked during his final two workweeks [*Id.* ¶¶ 16–17]. Plaintiff seeks back pay and an equal amount of liquidated damages [*Id.* ¶¶ 18–19]. Plaintiff also alleges a claim for breach of contract [*Id.* ¶¶ 21–24].

On March 7, 2024, plaintiff filed the summons returned executed as to defendant [Doc. 7]. On August 5, 2024, plaintiff applied to the Clerk of Court for an entry of default as to defendant because it failed to respond or otherwise defend in this action [Docs. 9, 10], and the Clerk entered default on September 26, 2024 [Doc. 12]. Plaintiff now seeks a default judgment against defendant [Doc. 18].

II. Analysis

Federal Rule of Civil Procedure 55 “contemplates a two-step process for obtaining a default judgment against a defendant who has failed to plead or otherwise defend.” *Banner Life Ins. Co. v. Columbia State Bank*, No. 3:19-CV-119, 2020 WL 3977635, at *1 (E.D. Tenn. July 14, 2020). “First, pursuant to Rule 55(a), a plaintiff must request from the Clerk of Court an entry of default, describing the particulars of the defendant’s failure to plead or otherwise defend.” *Id.* If the clerk enters default, “the plaintiff must then move the Court for entry of default judgment pursuant to Rule 55(b).” *Id.* Pursuant to Rule 55(b), a default can be entered by the Clerk “[i]f the plaintiff’s claim is for a sum certain

or a sum that can be made certain by computation[.]” Fed. R. Civ. P. 55(b)(1). But “[i]n all other cases, the party must apply to the court for a default judgment.” Fed. R. Civ. P. 55(b)(2).

Proceeding under Rule 55(b)(2), after the Clerk has entered default, the court must take the complaint’s factual allegations as true. *Bogard*, 2013 WL 2209154, at *3. However, the Court must determine whether the factual allegations “are sufficient to state a claim for relief as to [the] cause of action for which the plaintiff seeks default judgment.” *J & J Sports Prods., Inc. v. Rodriguez*, No. 1:08-CV-1350, 2008 WL 5083149, at *1 (N.D. Ohio Nov. 25, 2008) (citation omitted). Although the Court takes factual allegations regarding liability as true, the plaintiff must prove the amount of damages. *Bogard*, 2013 WL 2209154, at *3.

A. Sufficiency of the Complaint

Plaintiff alleges defendant is liable under the FLSA for failure to pay a minimum wage. “Congress passed the FLSA with broad remedial intent.” *Keller v. Miri Microsystems, LLC*, 781 F.3d 799, 806 (6th Cir. 2015). “The FLSA requires employers to pay employees engaged in commerce a wage consistent with the minimum wage[.]” *Id.* (internal quotation marks and alterations omitted). Currently, that minimum wage is \$7.25 per hour. *Crowell v. M Street Entertainment, LLC*, 670 F. Supp. 3d 563, 581 (M.D. Tenn. 2023) (citing 29 U.S.C. § 206(a)(1)(C)). An employer violates § 206 of the FLSA “when it fails to pay a minimum-wage worker for the full number of hours [t]he worked in a timely manner.” *Athan v. United States Steel*, 364 F. Supp. 3d 748, 753 (E.D. Mich. 2019).

“Under the FLSA, only employees are entitled to . . . minimum-wage compensation.” *Keller*, 781 F.3d at 806. The FLSA defines an “employee” as “any individual employed by an employer.” *Id.* at 807 (quoting 29 U.S.C. § 203(e)(1)). The Sixth Circuit has interpreted “employees” within the FLSA to mean “those who as a matter of economic reality are dependent upon the business to which they render service.” *Id.* (quoting *Brandel*, 736 F.2d at 1116).

Here, plaintiff has alleged that he was employed by defendant as a dishwasher in its Chattanooga restaurant [Doc. 1 ¶ 6]. Plaintiff alleges that defendant was an “employer” within the meaning of § 203(d) of the FLSA, and plaintiff was an “employee” within the meaning of § 203(e)(1) of the FLSA [*Id.* ¶¶ 11–12]. And, plaintiff alleges, defendant failed to pay him any compensation for the hours he worked during his last two weeks of his employment with defendant [*Id.* ¶¶ 8–9, 17]. Consequently, the Court finds that the complaint sufficiently alleges that defendant violated the FLSA by failing to pay him a minimum wage for the final two weeks of his employment.

Plaintiff also raises a state law claim of breach of contract. “In Tennessee, the essential elements of a breach of contract claim are as follows: (1) the existence of an enforceable contract, (2) nonperformance amounting to a breach of the contract, and (3) damages caused by the breach of the contract.” *McClanahan v. State Farm Life Ins. Co.*, 660 F. Supp. 3d 728, 737 (W.D. Tenn. Mar. 9, 2023).

Plaintiff has alleged that defendant agreed to pay him a specific hourly rate for his work [Doc. 1 ¶ 7], and that such agreement was an enforceable contract under Tennessee

law [*Id.* ¶ 22]. Plaintiff alleges that defendant thereafter failed to pay him any compensation for the final two weeks of his employment, in breach of that agreement [*Id.* ¶¶ 8–9, 23]. Moreover, plaintiff alleges that he sustained damages through the loss of compensation for hours worked [*Id.* ¶ 24]. The Court finds that the complaint sufficiently alleges that defendant breached a contract with plaintiff by failure to pay him any compensation for hours worked during his final two weeks of employment.

B. Damages

Turning to the appropriate remedy, plaintiff seeks back pay/lost wages and liquidated damages.² Although the Court must take as true the factual allegations regarding liability in the complaint, plaintiff must prove the appropriate amount of damages. *Bogard*, 2013 WL 2209154, at *3. In determining damages, “[t]he Court may rely on affidavits [and other materials] . . . without the need for a hearing.” *Dirs. of the Ohio Conf. of Plasterers & Cement Masons Combined Funds, Inc. v. Akron Insulation & Supply, Inc.*, No. 5:16-CV-1674, 2018 WL 2129613, at *5 (N.D. Ohio May 8, 2018). “Under the FLSA, successful claimants are entitled to ‘the payment of wages lost’ as a result of the FLSA violations, plus ‘an additional equal amount as liquidated damages.’” *Crowell v. M. Street Entertainment, LLC*, 670 F. Supp. 3d 563, 572 (M.D. Tenn. 2023) (quoting 28 U.S.C. § 216(b)).

As to wages lost, plaintiff has filed a declaration stating that he was paid \$9.25 an

² Although the complaint asks for interest and attorney’s fees [Doc. 1, pp. 3–4], plaintiff does not appear to request any award of interest or attorney fees in his motion for default judgment [See Doc. 18].

hour for his work as a dishwasher at defendant's restaurant [Doc. 18-1 ¶ 2]. During his last two weeks of work, for which he received no compensation, he worked 18 hours each week, for a total of 36 hours [*Id.* ¶ 3]. Based on this, the Court finds that defendant is entitled to an award of lost wages in the amount of \$333 (\$9.25 x 36 hours).

Turning to liquidated damages, the Court notes that, "[l]iquidated damages [under the FLSA] do not include regular wages; only minimum wages or overtime pay should be doubled." *Garcia v. Jac-Co Constr., Inc.*, No., 2:23-cv-2485, 2024 WL 2303962, at *5 (W.D. Tenn. May 21, 2024). Accordingly, plaintiff's recovery of liquidated damages is limited to the unpaid minimum wage amount. As noted previously, the current minimum wage is \$7.25 an hour. *See* 29 U.S.C. § 206(a)(1)(C). Based on this, the Court finds that defendant is entitled to an award of liquidated damages in the amount of \$261 (\$7.25 x 36 hours).

In total, the Court finds that plaintiff is entitled to damages in the amount of \$594.

III. Conclusion

For the foregoing reasons, the Court finds plaintiff is entitled to a default judgment as to his FLSA and breach of contract claims against defendant. Accordingly, plaintiff's motion [Doc. 18] will be **GRANTED**. The Court will **ORDER** that plaintiff recover from defendant a total sum of \$594. The Clerk of Court will be **DIRECTED** to **CLOSE** this case. A separate order will enter.

ENTER:

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE